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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/597,940    02/07/96    ISEBERG    S    10841US03

LE, H EXAMINER

26M2/0820

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ART UNIT

PAPER NUMBER

2608

20

DATE MAILED:

08/20/96

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/597,940

Applicant(s)

Iseberg et al.

Examiner

Huyen Le

Group Art Unit

2608



☒ Responsive to communication(s) filed on Feb 7, 1996

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 22-24 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 22-24 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2608

**Part III     DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24, lines 7-8, "corresponding low frequency components" lacks antecedent basis.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made

Art Unit: 2608

absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

3. Claim 22 is rejected under 35 U.S.C. § 103 as being unpatentable over Miller (U.S. patent no. 3,819,860) in view of Gauthier (U.S. patent no. 4,520,236), McCabe (U.S. patent no. 3,671,685) and further in view of Killion (U.S. patent no. 4,677,679).

Miller teaches that an insert earphone comprises a unitary housing having a hollow body portion (29 and see figure 2). The hollow body portion (11, 29) has an end wall, an open end (see the opening for the cable 18), and a hollow elongated tubular portion (11) extending from the end wall.

In addition, Miller shows that an end cap (not numbered, see the end cap for the cable 18) is connected to cover the open end (the opening for the cable of the hollow body portion (29), a cable (16, 18, column 2 lines 56-62) includes plural conductors. Further, Miller shows that a receiver (19) has a sound outlet port (not numbered, see figure 2), a damper (26).

Miller lacks the teaching of a resilient inserting disposed between the receiver and the interior walls of the unitary housing.

Gauthier teaches that a resilient insert (36) is packed surround the receiver (32) of a hearing aid.

Art Unit: 2608

Since Miller and Gauthier teaches a body of the material surrounding the receiver for attenuating and dampening of spurious sound waves entering through the housing; it therefore would have been obvious to one skilled in the art to provide the resilient material, as taught by Gauthier, in order to substitute the body of the liquid in the Miller. This would provide a better material to prevent the mechanical vibrations of the receiver from being transmitted to the housing, and the feedback from the source.

Miller in view of Gauthier does not specifically teach a resilient sealing member disposed over the tubular portion. However, it is very well known in the art to provide a resilient sealing member disposed over the earpiece.

McCabe teaches a sealing member (8a, 8b) for an insert earphone (figure 1).

Therefore, it would have been obvious to one skilled in the art to provide a sealing member, as taught by McCabe, disposed over the tubular portion of the Miller, in order to provide a replaceable eartip to the earpiece.

Miller in view of Gauthier and McCabe does not teach a high fidelity response for the earphone. However, it is very well-known in the art to provide a high-fidelity earphone.

Further, Killion teaches a network (40a) in the earphone for providing a high-fidelity response (column 3, lines 42-50 and column 6, lines 44-56).

Art Unit: 2608

Therefore, it would have been obvious to one skilled in the art to provide a network, as taught by Killion, in the earphone of the Miller in view of Gauthier and McCabe in order to provide a high quality sound for the earphone.

4. Claims 23 and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over McCabe U.S. patent no. 3,671,685) in view of Langford (U.S. patent no. 3,408,461) and further in view of Killion (U.S. patent no. 4,677,679).

Regarding claims 23 and 24, McCabe teaches that an apparatus comprises an electrical connector (3a, 3b), plural conductors (4a', 4a", 4b', 4b"), and a pair of insert earphones (2a, 2b). The earphones comprise a unitary housing (2a, 2b), a receiver (5), and a resilient sealing member (8a, 8b).

McCabe lacks the teaching of a damper supported within the hollow elongated tubular portion (7a, 7b). However, it is very well-known in the art to provide a damper disposed at the hollow tube which is connected to the ear canal of the wearer.

Langford shows a damper (41) which is disposed at the hollow tube of a hearing aid.

Therefore, it would have been obvious to one skilled in the art to provide the damper, as taught by Langford, in the hollow elongated tubular portion of the McCabe headset for attenuating the acoustic of the sound path.

Art Unit: 2608

McCabe in view of Langford does not teach a high fidelity response or a filter for the earphone. However, it is very well-known in the art to provide a filter for improving the quality sound of the earphone.

Further, Killion teaches a network circuit (40a, 40a', 40b) in the earphone for providing a high-fidelity response (column 3, lines 42-50 and column 6).

Therefore, it would have been obvious to one skilled in the art to provide a network circuit or the filter, as taught by Killion, in the earphone of the McCabe in view of Langford in order to provide a high quality sound for the earphone.

#### *Conclusion*

5. This is a continuation of applicant's earlier application S.N. 08/430,698. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Serial Number: 08/597,940

7

Art Unit: 2608

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is (703) 305-4844. The examiner can normally be reached on Monday to Friday from 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached on (703) 305-4708. The fax phone number for this Group is (703) 305-9508.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4750.



HL  
August 16, 1996



CURTIS KUNTZ  
SUPERVISORY PATENT EXAMINER  
GROUP 2600